

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Saluda County
The Honorable William P. Keesley, Circuit Court Judge

Appellate Case No. 2019-001452

THE STATE,.....RESPONDENT

RECEIVED

JUL 31 2020

SC Court of Appeals

v.

MARTIN D. PITTMAN,.....APPELLANT

FINAL BRIEF OF RESPONDENT

**Janell H. Gregory
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STATEMENT OF THE ISSUE ON APPEAL

Whether the circuit court properly revoked Appellant's probation and placed Appellant on the Sex Offender Registry after Appellant admittedly failed to comply with his probation conditions as required by his plea agreement?

STATEMENT OF THE CASE

Appellant was initially charged with criminal sexual conduct with a minor, third degree, two counts of criminal solicitation of a minor, and five counts of dissemination of obscene material to a person under the age of eighteen. On December 17, 2018, Appellant entered a guilty plea to two counts of contributing to the delinquency of a minor (2018-GS-02-02876, - 02878), and assault and battery second degree (2018-GS-02-02879) before the Honorable Doyet A. Early, III. Pursuant to the negotiated plea, Judge Early sentenced Appellant to three years suspended on five years' probation without requiring Appellant to register as a sex offender. (R. p. 29-p.37). Sentence Sheets) The plea agreement went on to state, "However, if the defendant fails to comply with the probation conditions as set forth above, the [appellant] will go back before the Court for placement on the Sex Offender Registry and determination of revocation of probation for a period of incarceration." (R. p.25).

On August 21, 2019, Appellant appeared before the Honorable William P. Keesley for a probation revocation hearing. Assistant Public Defender Erin R. Conroy (Conroy) of the Eleventh Circuit Public Defender's Office represented Appellant. Agent Pat Griffith (Griffith) of the Department of Probation, Parole, and Pardon Services appeared on behalf of the State. During this hearing, Griffith presented evidence of Appellant's failure to comply with the numerous conditions of his probation. At the conclusion of the hearing, Judge Keesley found Appellant had willfully violated the terms of his probation and revoked his probation in full. (R. p.22.) Pursuant to Appellant's plea agreement, Judge Keesley also directed Appellant be placed on the Sex Offender Registry. (R.p. 22.)

On August 29, 2019, Appellant filed and served a Notice of Appeal. This brief follows.

ARGUMENT

The circuit court properly revoked Appellant's probation and placed Appellant on the Sex Offender Registry after Appellant admittedly failed to comply with his probation conditions as required by his plea agreement.

Appellant argues the circuit court improperly revoked his probation for failing to maintain employment, proper housing, and abide by his curfew restrictions. Appellant also argues the circuit court abused its discretion by requiring him to register as a sex offender. However, Respondent respectfully submits the circuit court properly revoked Appellant's probation after he admittedly failed to comply with his numerous probation conditions. Further, the circuit court properly acted within its discretion when it imposed the sex offender registry on Appellant since the plea agreement – which was signed by Appellant – provided Appellant would be placed on the Sex Offender Registry if he failed to comply with the conditions of his probation. The circuit court found Appellant failed to comply with numerous conditions of his probation, and therefore properly exercised its discretion in imposing the sex offender registry on Appellant. Therefore, the decision of the circuit court should be upheld.

“Probation is a matter of grace; revocation is the means to enforce the conditions of probation.” State v. Williamson, 356 S.C. 507, 510, 589 S.E.2d 787, 788 (2003) (citing State v. Hamilton, 333 S.C. 642, 647, 511 S.E.2d 94, 96 (Ct. App. 1999)). “Before revoking probation the circuit judge must determine if there is sufficient evidence to establish that the probationer has violated his probation conditions.” Id.

Here, Appellant fully admitted he was in violation of his probation conditions. During the hearing, Conroy states, “. . . [Appellant] admits that he's been in violation with, you know, being out after curfew and the unemployment issues[.]” (R. p. 21.) Appellant argues he was unable to meet the conditions of his probation because he is indigent. However, Griffith explained to the

court that he felt sorry for Appellant and assisted him in securing proper housing and found Appellant a job paying \$12 an hour assisting in renovations of rental homes; all Appellant had to do was show up, which he failed to do. (R.p.5-6, p.20.) Appellant remained unemployed until the day before the hearing when he secured employment at McDonald's.¹ (R. p. 5-6.)

Appellant argues his inconsistent housing and unemployment were not the result of willful actions; however, a finding of willfulness is only required when probation is being revoked for nonpayment of fines. See Hamilton, 333 S.C. 642, 648, 511 S.E.2d 94, 97 (1999) (“It is only when probation is revoked *solely* for the failure to pay fines or restitution that a finding of willfulness is mandatory.”) (emphasis in the original). Here, Appellant’s probation was not being revoked for Appellant’s nonpayment of fines, rather Appellant’s probation was being revoked because he violated the conditions of his probation by failing to work diligently at a lawful occupation, failing to maintain his curfew, and failing to follow the advice and instruction of the agent. (R. p. 22.) As such, the proper evaluation for the circuit court in determining whether Appellant’s probation should be revoked is whether there is “sufficient evidence to establish that the probationer has violated his probation conditions.” Hamilton, 333 S.C. at 648-649, 511 S.E.2d at 97. Here, the circuit judge had sufficient evidence to revoke Appellant’s probation as Conroy conceded Appellant had failed to meet numerous conditions of his probation during the revocation hearing. (R. p. 21.) Further, at the hearing, Griffith was able to establish Appellant failed to maintain proper housing and employment during his probation, despite Griffith’s efforts to arrange for both housing and employment for Appellant through Christ Central. (R. p.20-21.) Griffith was also able to establish numerous occasions where Appellant broke curfew based on his electronic

¹ Griffith explained during the revocation hearing that Appellant had previously worked at Amick Farms on two different occasions while on probation. His employment was terminated one time because he was fired within a month for not showing up for work. During his second term of employment at Amick Farms, Appellant quit after two days because his hands hurt. (R. p. 21.)

monitoring log, which showed Appellant was out past curfew on four occasions. During the revocation hearing, Appellant did not dispute he failed to make it home in time for his curfew on four occasions. (R. p.16.) As such, the circuit court's determination that there was sufficient evidence to revoke Appellant's probation was proper.

Appellant argues the circuit court failed to exercise discretion in Appellant's case because the "alleged violations" were minimal. As an initial matter, Appellant's violations are not alleged as Appellant admitted to being in violation of his probation conditions during the hearing. (R. p. 21.) Further, this Court's authority to review the circuit court's revocation of probation "is confined to correcting errors of law unless the lack of legal or evidentiary basis indicates the circuit judge's decision was arbitrary and capricious." State v. Williamson, 356 S.C. 507, 510, 589 S.E.2d 787, 788 (2003) (citing State v. Hamilton, 333 S.C. 642, 647, 511 S.E.2d 94, 96 (Ct. App. 1999)). Here, the circuit court had sufficient evidence to revoke Appellant's probation as Appellant admitted to violating the conditions of his probation. Additionally, Griffith was able to establish four curfew violations based on Appellant's GPS tracking. Therefore, this Court should affirm the decision of the circuit court as Appellant has failed to show any error of law. Further, the revocation was based on sufficient evidence thereby refuting the argument that the circuit court's decision was arbitrary and capricious.

Appellant further argues the circuit court improperly ordered Appellant to register as a sex offender at the revocation hearing. In support of his argument, Appellant cites to State v. Davis, 375 S.C. 12, 649 S.E.2d 178 (2007), where this Court held the presiding judge at a probation revocation hearing was not authorized to order a defendant to be placed on the Sex Offender Registry as a condition of probation. However, the case at bar is distinguishable from Davis. In Davis, the sentencing judge at Davis plea hearing ordered that Davis not be required to register as

a sex offender. Id. at 14, 649 S.E.2d at 179. Here, the presiding judge over Appellant's guilty plea did not provide such an order. In fact, the plea judge here accepted Appellant's plea agreement that stated in part:

In exchange for the preceding terms, the State will negotiate a three year sentence suspended upon five years' probation with no request for Sex Offender Registry. However, if the defendant fails to comply with the probation conditions as set forth above, [Appellant] will go back before the Court for placement on the Sex Offender Registry and determination of revocation of probation for a period of incarceration.

(R. p.25) (emphasis in original). Here, unlike Davis, the plea judge accepted Appellant's plea agreement that mandated Appellant be placed on the Sex Offender Registry if he failed to comply with the conditions of his probation.

In State v. Herndon, 403 S.C. 84, 742 S.E.2d 375 (2013), Herndon was charged with criminal sexual conduct with a minor, first-degree in Beaufort County. Herndon entered an Alford² plea to assault and battery of a high and aggravated nature. Herndon's negotiated plea sentenced him to ten years' imprisonment suspended upon the service of five years' probation and included two special conditions: 1) no contact with the victim or the victim's family, and 2) successfully complete sex abuse counseling. Id. at 86, 742 S.E.2d at 376. Herndon's plea agreement also stated Appellant would "face lifetime sex offender registration if he failed to successfully complete sex abuse counseling." Id. Herndon failed to complete his sex offender counseling and during his probation violation hearing, the circuit court judge ordered Herndon to register as a sex offender pursuant to the terms of his negotiated plea. Id. at 88-89, 742 S.E.2d at 377-378. The South Carolina Supreme Court upheld the circuit court's imposition of the sex

² North Carolina v. Alford, 400 U.S. 25 (1970).

offender registry on Herndon after he failed to comply with his probation conditions. Id. at 95, 742 S.E.2d at 381.

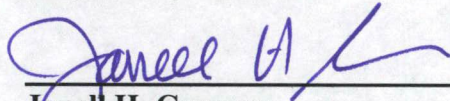
Here, as in Herndon, Appellant's negotiated plea agreement mandated he comply with the conditions of his probation or be placed on the Sex Offender Registry. Appellant was aware his failure to comply with his probation conditions would result in revocation of his probation and placement on the Sex Offender Registry as his signature appears at the bottom of the plea agreement. The circuit court here, as in Herndon, properly revoked Appellant's probation and ordered Appellant to register as a sex offender as a result of his failure to comply with his probation conditions.

Appellant's claims that the circuit court's revocation of his probation and placement on the sex offender registry was arbitrary and capricious are meritless. Appellant admitted at the revocation hearing that he was in violation of the probation conditions. Additionally, Griffith presented evidence to the circuit court that Appellant consistently had issues with finding proper housing and employment during his time on probation. Further, Appellant was on electronic monitoring and evidence was presented to the court showing four instances where he violated the curfew condition of his probation, which Appellant did not dispute. The circuit court had sufficient evidence to revoke Appellant's probation for failing to comply with his probation conditions. As a result of his non-compliance, Appellant was ordered to register as a sex offender, which was the consequence set forth in Appellant's negotiated plea agreement. Appellant was aware fully aware he would be placed on the Sex Offender Registry if he failed to comply with his probation conditions. As such, the circuit court properly revoked Appellant's probation and placed him on the Sex Offender Registry for failing to comply with his probation condition. The circuit court's decision should be upheld by this Court.

CONCLUSION

The circuit court was well within its authority to revoke the appellant's probation and place him on the Sex Offender Registry after he failed to comply with the terms of his probation. The circuit court judge was provided with sufficient evidence of Appellant's failure to comply with his probation conditions at the revocation hearing to justify Appellant's probation revocation. Furthermore, Appellant failed to meet his burden to show the circuit court's decision was arbitrary and capricious as Appellant's negotiated plea agreement specifically stated he would be placed on the Sex Offender Registry if he failed to comply with his probation conditions. Therefore, this Court should affirm the circuit court's decision.

Respectfully submitted,



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July 24, 2020

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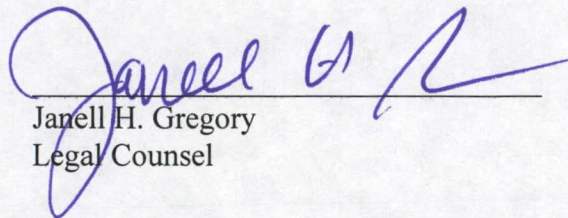
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APPELLANT

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR and with the South Carolina Supreme Court's order dated August 13, 2007.



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July 24, 2020